

23372

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor Jakob SCHNEIDER et al
Patent App. 10/552,821
Filed 6 October 2005 Conf. No. 9460
For RECLOSABLE SHOPPING BAG
Art Unit 3782 Examiner Pascua, J
Hon. Commissioner of Patents
Box 1450Appealed 06-Aug-09
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR 41.41

Now come appellants by their duly authorized attorney and submit their reply brief under the provisions of 37 CFR 41.41.

The examiner admits that the art shows everything "except for the handles being welded to the outer face of the side panels." Hence, to reject the claims the examiner adds that "it has been held that rearranging parts of an invention only involves routine skill in the art." This is absolutely not the law.

In fact rearranging parts is often the very essence of invention. The question is not whether the invention comprises a rearrangement of parts, but instead whether the rearrangement of parts is obvious from the cited art and/or whether it yields a new and unobvious advantage, which is the case here as laid out in detail in the original Brief. Surely in a structure as simple as the shopping bag being claimed here, if the rearrangement were

obvious the examiner would have been able to find a reference showing the feature.

The examiner's position that nothing can be inventive if it is made up of known parts in any desired relative configuration or arrangement is clearly wrong. In fact, except for the tiny minority of patents claiming a wholly new material, all patents are comprised of known parts and elements in new configurations.

Going further, as far back as *Ex parte Leaval* (212 USPQ 763) the Board of Appeals stated that "The legal conclusion of obviousness must be bottomed on a solid evidentiary base." There the rejection was reversed because "the evidence of record" did not provide such a base. That would be the appropriate conclusion here.

Since the rejection is based on a completely unsupported theory - that anything made up of known parts is not novel - and not on the art, it must be reversed.

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